

## APPELLATE CRIMINAL.

FULL BENCH.

*Before Sir John Beaumont, Chief Justice, Mr. Justice Sea and Mr. Justice Norman.*

EMPEROR v. WAMAN RAMJI PATIL (ORIGINAL ACCUSED).<sup>2</sup>

1937  
August 17

*Criminal Procedure Code (Act V of 1898), section 562 (1) proviso, sub-section (1A) — Accused released on admonition—Third Class Magistrate—Whether order legal.*

The proviso to sub-section (1) of section 562 of the Criminal Procedure Code, 1898, does not extend to the powers conferred by sub-section (1A). A Third Class Magistrate is, therefore, entitled to exercise the powers conferred by sub-section (1A).

*Emperor v. Ranchhod Harjivan*,<sup>(1)</sup> overruled.

*Murlidhar v. Mahbub Khan*,<sup>(2)</sup> followed.

CRIMINAL REFERENCE made by A. H. Dracup, District Magistrate, West Khandesh.

The accused released after due admonition under section 562 (1A) of the Criminal Procedure Code.

The accused three in number were charged with the offence under sections 426 and 447 of the Indian Penal Code, for having obstructed the servant of the complainant in farming operations and for damaging his agricultural implements. The Third Class Magistrate of Sindkheda, who heard the case, convicted all the accused of the offence charged and sentenced accused Nos. 1 and 2 to pay fines of Rs. 15 and Rs. 10 respectively. As to the accused No. 3, the Magistrate found that as he was only fifteen years of age and was a tool in the hands of two other accused, he released him after due admonition under section 562 (1A) of the Criminal Procedure Code, 1898.

The District Magistrate of West Khandesh made a reference to the High Court for the reason that "as the Magistrate has not been invested with powers under section 562, Criminal Procedure Code, his action in

\*Criminal Reference No. 123 of 1937.

<sup>(1)</sup> (1925) 27 Bom. L. R. 1019.

<sup>(2)</sup> (1924) 47 All. 352.

employing the section is illegal". He was of the opinion that the proviso to sub-section (I) governed the whole section and was therefore applicable to sub-section (1A), so that a Third Class Magistrate not invested with the powers under that section was not competent to release an offender after due admonition under sub-section (1A).

The reference was first heard by Beaumont C. J. and Norman J. on August 9, 1937, when their Lordships directed it to be placed before a full bench.

*Dewan Bahadur P. B. Shingne*, Government Pleader, for the Crown. The point involved in this reference relates to the operation of the proviso to section 562, sub-section (I), of the Criminal Procedure Code, 1898. In *Emperor v. Ranchhod Harjivan*<sup>(1)</sup> it was held that the proviso which stands in the middle of section 562 applies to sub-section (1A), which has been newly added to the section. This view was approved in the case of *King-Emperor v. Daulat Singh*.<sup>(2)</sup> A contrary view is taken by the Allahabad High Court in *Murlidhar v. Mahbub Khan*,<sup>(3)</sup> where it is stated that the proviso to sub-section (I) must be read as a part of the said sub-section and does not qualify sub-section (1A).

I submit that in this regard we must examine the old section 562 and the present amendments made in the section. Originally in 1898 when Act V of 1898 was passed, the section stood in terms as it is now found in sub-section (1A). The first amendment to this section was effected by the Criminal Procedure Code Amendment Act XVIII of 1923. By this amendment operation of the section was extended to graver offences. Later on, the legislature found that it was necessary to allow the operation of the section in the case of offences of a trivial nature and with this end in view, sub-section (1A) was incorporated by Amendment Act XXXVII of 1923. Nevertheless it is possible to conclude that the proviso was intended to apply also to cases under

<sup>(1)</sup> (1925) 27 Bom. L. R. 1019.

<sup>(2)</sup> [1928] A. I. R. Nag. 343.

<sup>(3)</sup> (1924) 47 All. 353.

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sub-section (1A) as the words in the proviso "this section" are wide enough and may be intended and meant to cover the cases falling under sub-section (1A). This is substantially the view taken by this Court in the previous case. The other view that is possible is that the legislature probably put sub-section (1A) after the proviso intending that Magistrates of Second Class or Third Class in the ordinary course may resort to the provisions of sub-section (1A) in appropriate cases involving offences of a trivial nature.

There was no appearance for the accused.

BEAUMONT C. J. This is a reference made by the District Magistrate of West Khandesh inviting the Court to set aside an order made by the Third Class Magistrate of Sindkheda under section 562 (1A) of the Criminal Procedure Code on the ground that the Magistrate had no power to make the order in view of the proviso to section 562 (1). The District Magistrate's view is no doubt based on the decision of this Court in *Emperor v. Ranchhod Harjivan*,<sup>(1)</sup> though the Allahabad High Court in *Murlidhar v. Mahbab Khan*<sup>(2)</sup> has taken the view that the proviso to section 562 (1) does not apply to section 562 (1A). When the matter came before a division bench consisting of myself and Mr. Justice Norman we thought that there was some doubt as to whether the decision in *Emperor v. Ranchhod Harjivan*<sup>(1)</sup> was right and therefore the matter was referred to a full bench, and the Government Pleader has appeared and submitted his views to the Court.

Now section 562 (1) enables the Court to bind over a first offender, instead of sentencing him, in cases covered by the section. The section deals with an offence by any person not under twenty-one years of age punishable with not more than seven years imprisonment and with an offence by any person under twenty-one years of age or any woman

<sup>(1)</sup> (1925) 27 Bom. L. R. 1019.

<sup>(2)</sup> (1924) 47 All. 353.

which is punishable with death or transportation for life, where no previous conviction is proved against the offender, and in deciding whether to apply the sub-section or not the Court is to have regard to the age, character or antecedents of the offender and to the circumstances in which the offence was committed. Then the proviso directs that where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not especially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred "by this section" should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, or Sub-Divisional Magistrate and the latter Magistrate can then take the appropriate action.

Sub-section (1A) was added in the year 1923 and the amending Act provides merely that after sub-section (1) of section 562 of the Criminal Procedure Code the following sub-section shall be inserted, and then sub-section (1A) is enacted. That sub-section enables the Court in the case of a person convicted of certain offences which are specified or any offence under the Indian Penal Code punishable with not more than two years' imprisonment, where no previous conviction is proved, to discharge the accused with a warning, and the matters which the Court is to take into consideration in determining whether to exercise the powers conferred by the sub-section are the age, character, antecedents or physical or mental condition of the offender and the trivial nature of the offence or any extenuating circumstances. So that the Court must find that the offence is of a trivial nature or that there are extenuating circumstances.

Now it is to be noticed that there is nothing in the amending Act to suggest that the proviso to sub-section (1) is to be read into the new sub-section (1A) and *prima facie* there seems to be no justification for taking the proviso out of sub-section (1) and reading it into sub-section (1A). It

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would have been very easy for the legislature, if they had so desired, to have enacted that the proviso to sub-section (1) was to extend to sub-section (1A). This Court in *Emperor v. Ranchhod Harjivan*,<sup>(1)</sup> in holding that the proviso did apply to sub-section (1A), relied on the fact that the proviso referred to the powers conferred "by this section," an expression which the Court thought would include sub-section (1A) after its enactment. But when one has regard to the provisions of sub-section (1) of section 562, before the addition of sub-section (1A), it is apparent that the reference to "this section" in the proviso was meant as a reference to "this sub-section" because the only other powers conferred by the section, namely those in sub-sections (2) and (3) are powers conferred on the High Court or an appellate Court, and it is obvious that the exercise of those powers could not be referred by a Third Class Magistrate to a First Class Magistrate.

So that on the language of the section as it stands I see no reason for reading the proviso to section 562 (1) into section 562 (1A). But in construing an Act of Parliament the Court must always have regard to the scheme of the Act as appearing from a perusal of the language of the whole enactment, and we have therefore to see whether it is necessary, in order to give effect to the scheme of the Act, that we should do a certain amount of violence to the language and read the proviso to sub-section (1) into sub-section (1A). In that connection the Government Pleader has referred us to the fact that sub-section (1) to section 562, as it originally existed, required the Court, in considering whether the powers in the sub-section should be applied, to have regard not only to the youth, character and antecedents of the offender (as at present), but to the trivial nature of the offence and to any extenuating circumstances under which the offence was committed. In the year 1923, by Act XVIII, sub-section (1) of section 562 was re-enacted and the

<sup>(1)</sup> (1925) 27 Bom. L. R. 1019.

obligation on the Court to have regard to the trivial nature of the offence and to extenuating circumstances was omitted. Then, later in the same year, came the amending Act adding sub-section (1A) which requires the Court, for the purposes of that sub-section, to have regard to the trivial nature of the offence or any extenuating circumstances. It seems to me, therefore, that the legislature intended that the powers conferred by section 562 (1) should be exercisable in cases of a serious nature which fell within the terms of the section, and not merely in cases of a trivial nature. On the other hand the special power conferred by sub-section (1A) of releasing after due admonition was only to be exercised in cases of a trivial nature or where extenuating circumstances were found, and it may well be that the legislature deliberately considered that in relation to the more serious powers under sub-section (1) it was not right to entrust them to the lower grades of Magistrates, but that in relation to the much less serious powers under sub-section (1A) there was no danger in allowing the less experienced Magistrates to act upon them. In my opinion, therefore, both on the language of the section as it stands, and on a consideration of the policy of the legislature as appearing from the history of the enactment and the language of the section as a whole, it is clear that the proviso to sub-section (1) does not extend to the powers conferred by sub-section (1A) and that a Third Class Magistrate is, therefore, entitled to exercise the powers conferred by sub-section (1A). *Emperor v. Ranchhod Harjivan*<sup>(1)</sup> (*supra*) must be treated as overruled.

For these reasons the reference will be rejected.

SEN J. I agree and have nothing to add.

NORMAN J. I agree. I too have nothing to add.

*Reference rejected.*

J. G. S.

<sup>(1)</sup>(1925) 27 Bom. L. R. 1019.